

1 PHILLIP A. TALBERT
Acting United States Attorney
2 LAURA D. WITHERS
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5

6 Attorneys for Plaintiff
United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 TANNER JOEL HERNANDEZ-FIELDS,
15 Defendant.
16

CASE NO. 1:20-CR-00221-DAD

PLEA AGREEMENT

DATE: NOVEMBER 15, 2021

TIME: 10:00 AM

COURT: Hon. DALE A. DROZD

17 I. INTRODUCTION

18 A. Scope of Agreement.

19 The indictment in this case charges the defendant with violations of 18 U.S.C. § 2252(a)(4)(B),
20 (b)(2) – Possession of Child Pornography (Count One) and 18 U.S.C. § 2252(a)(2) – Receipt and
21 Distribution of Child Pornography (Count Two). This document contains the complete plea agreement
22 between the United States Attorney’s Office for the Eastern District of California (the “government”)
23 and the defendant regarding this case. This plea agreement is limited to the United States Attorney’s
24 Office for the Eastern District of California and cannot bind any other federal, state, or local
25 prosecuting, administrative, or regulatory authorities.

26 B. Court Not a Party.

27 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
28 discretion of the Court, and the Court may take into consideration any and all facts and circumstances

1 concerning the criminal activities of defendant, including activities which may not have been charged in
2 the indictment. The Court is under no obligation to accept any recommendations made by the
3 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
4 including the statutory maximum stated in this plea agreement.

5 If the Court should impose any sentence up to the maximum established by the statute, the
6 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
7 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
8 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
9 receive.

10 II. DEFENDANT'S OBLIGATIONS

11 A. Guilty Plea.

12 The defendant will plead guilty to Count Two: Receipt and Distribution of Child Pornography, in
13 violation of Title 18, United States Code, Section 2252(a)(2). The defendant agrees that he is in fact
14 guilty of these charges and that the facts set forth in the Factual Basis for Plea attached hereto as Exhibit
15 A are accurate.

16 The defendant agrees that this plea agreement will be filed with the Court and become a part of
17 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
18 plea should the Court not follow the government's sentencing recommendations.

19 The defendant agrees that the statements made by him in signing this Agreement, including the
20 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
21 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
22 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
23 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
24 Agreement generally.

25 B. Restitution.

26 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
27 certain offenses. Defendant agrees that his conduct is governed by the Mandatory Restitution Act
28 pursuant to 18 U.S.C. §§ 3663A and 2259 and agrees to pay the full amount of restitution to all victims

1 affected by this offense, including, but not limited to, the victims covered in the factual basis, victims
2 covered in those counts to be dismissed as part of the plea agreement pursuant to 18 U.S.C.
3 § 3663A(a)(3), and other victims as a result of the defendant's conduct for the offenses charged from the
4 periods of March 19, 2019 through January 4, 2020.

5 Restitution payments shall be by cashier's or certified check made payable to the
6 Clerk of the Court, and defendant shall make payment of restitution in full within ninety (90) days of the
7 entry of judgment.

8 Defendant further agrees that he will not seek to discharge any restitution obligation or
9 any part of such obligation in any bankruptcy proceeding.

10 **C. Fine.**

11 The parties agree that no fine is appropriate in this case.

12 **D. Special Assessment.**

13 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
14 a check or money order payable to the United States District Court to the United States Probation Office
15 immediately before the sentencing hearing. The defendant understands that this plea agreement is
16 voidable at the option of the government if he fails to pay the assessment prior to that hearing. If the
17 defendant is unable to pay the special assessment at the time of sentencing, he agrees to earn the money
18 to pay the assessment, if necessary by participating in the Inmate Financial Responsibility Program.

19 **E. JVTA Assessment**

20 The defendant agrees that his conduct is governed by the Justine for Victims of Trafficking Act,
21 which mandates an additional assessment of \$5,000 pursuant to the parameters set forth under 18 U.S.C.
22 § 3014. Nonetheless, the defendant reserves the right to dispute the applicability of the \$5,000 JVTA
23 assessment to his individual circumstances at the time of sentencing.

24 If ordered, the defendant agrees to pay this assessment in full within ninety (90) days of the entry
25 of judgment.

26 **F. Violation of Plea Agreement by Defendant/Withdrawal of Plea.**

27 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
28 his plea, this plea agreement is voidable at the option of the government. If the government elects to

void the agreement based on the defendant's violation, the government will no longer be bound by its representations to the defendant concerning the limits on criminal prosecution and sentencing as set forth herein. A defendant violates the plea agreement by committing any crime or providing or procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in any litigation or sentencing process in this case, or engages in any post-plea conduct constituting obstruction of justice. Varying from stipulated Guidelines application or agreements regarding arguments as to Title 18, United States Code, Section 3553, as set forth in this agreement, personally or through counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1) to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for any federal criminal violation of which the government has knowledge. The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

By signing this plea agreement, the defendant agrees to waive any objections, motions, and defenses that the defendant might have to the government's decision. Any prosecutions that are not time-barred by the applicable statute of limitations as of the date of this plea agreement may be commenced in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement of any such prosecutions. The defendant agrees not to raise any objections based on the passage of time with respect to such counts including, but not limited to, any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as of the date of this plea agreement. The determination of whether the defendant has violated the plea agreement will be under a probable cause standard.

In addition, (1) all statements made by the defendant to the government or other designated law enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal, whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal

1 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
2 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
3 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

4 **G. Forfeiture.**

5 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right
6 title and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. § 2253(a). Those assets
7 include, but are not limited to, the following:

- 8 1. Apple iPhone 6 Model A1549, seized from defendant by law enforcement on
9 February 27, 2020; and
- 10 2. Any additional thumb drives, SD cards, compact discs, cell phones, hard drives,
11 or other electronic storage devices containing visual depictions of minors engaged in sexually explicit
12 conduct and seized from the defendant by law enforcement on or about February 27, 2020.

13 The defendant agrees that the listed assets constitute property which contain visual depictions
14 produced, transported, mailed, shipped, or received in violation of 18 U.S.C. § 2252(a)(2) or was used or
15 intended to be used to commit or to promote the commission of a violation of 18 U.S.C. § 2252(a)(2)
16 and (b)(1), or to any property traceable to such property.

17 The defendant agrees to fully assist the government in the forfeiture of the listed assets and to
18 take whatever steps are necessary to pass clear title to the United States. The defendant shall not sell,
19 transfer, convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed
20 assets.

21 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,
22 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of
23 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
24 claim in that forfeiture proceeding.

25 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
26 assets. The defendant knowingly and voluntarily waives all constitutional, legal and equitable defenses
27 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
28 and agrees to waive any claim or defense under the Eighth Amendment to the United States

1 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
2 the State of California or its subdivisions.

3 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
4 defenses or defects that may pertain to the forfeiture.

5 **H. Asset Disclosure.**

6 The defendant agrees to make a full and complete disclosure of his assets and financial
7 condition, and will complete the United States Attorney's Office's "Authorization to Release
8 Information" and "Financial Affidavit" within three (3) weeks from the entry of the defendant's change
9 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order
10 to that effect. The defendant understands that if he fails to complete truthfully and provide the described
11 documentation to the United States Attorney's office within the allotted time, he will be considered in
12 violation of the agreement, and the government shall be entitled to the remedies set forth in section II.F,
13 above.

14 Defendant expressly authorizes the United States Attorney's Office to immediately obtain a
15 credit report on the defendant in order to evaluate his ability to satisfy any financial obligation imposed
16 by the Court.

17 **III. THE GOVERNMENT'S OBLIGATIONS**

18 **A. Dismissals.**

19 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
20 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
21 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.F (Violation
22 of Plea Agreement by Defendant/Withdrawal of Plea), VI.B (Stipulations Affecting Guideline
23 Calculation), and VII.B (Waiver of Appeal and Collateral Attack) herein.

24 **B. Recommendations.**

25 **1. Incarceration Range.**

26 The government will recommend that the defendant be sentenced to a term of
27 imprisonment within the applicable guideline range as determined by the Court, and no less than the
28 mandatory minimum of **60 months**.

1 2. Acceptance of Responsibility.

2 The government will recommend a two-level reduction (if the offense level is less than
3 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if
4 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G.
5 § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation
6 of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise
7 engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either
8 in the preparation of the pre-sentence report or during the sentencing proceeding.

9 **C. Use of Information for Sentencing.**

10 The government is free to provide full and accurate information to the Court and Probation,
11 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
12 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
13 understands and agrees that nothing in this Plea Agreement bars the government from defending on
14 appeal or collateral review any sentence that the Court may impose.

15 **IV. ELEMENTS OF THE OFFENSE**

16 At a trial, the government would have to prove beyond a reasonable doubt the following
17 elements of the offense to which the defendant is pleading guilty, Receipt and Distribution of Child
18 Pornography, in violation of Title 18, United States Code, Section 2252(a)(2):

- 19 1. The defendant knowingly received or distributed a visual depiction of sexually
20 explicit conduct;
21 2. It was a visual depiction of a minor, and the production involved the use of a
22 minor engaging in sexually explicit conduct;
23 3. The visual depiction was shipped/transported/mailed in interstate or foreign
24 commerce by any means, including a computer; and
25 4. The defendant knew that at least one of the individuals in such visual depiction
26 was a minor and knew that the visual depiction was of such minor engaged in sexually
27 explicit conduct.

28 The defendant fully understands the nature and elements of the crimes charged in the indictment
to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
his attorney.

1 V. MAXIMUM SENTENCE

2 A. Maximum Penalty.

3 The maximum sentence that the Court can impose is 20 years of incarceration, a fine of
4 \$250,000, a lifetime period of supervised release and a special assessment of \$100. There is a
5 mandatory minimum sentence of 5 years of imprisonment and a 5-year period of supervised release. By
6 signing this plea agreement, the defendant also agrees that the Court can order the payment of restitution
7 for the full loss caused by the defendant's wrongful conduct. The defendant agrees that the restitution
8 order is not restricted to the amounts alleged in the specific count to which he is pleading guilty. The
9 defendant further agrees, as noted above, that he will not attempt to discharge in any present or future
10 bankruptcy proceeding any restitution imposed by the Court.

11 B. Violations of Supervised Release.

12 The defendant understands that if he violates a condition of supervised release at any time during
13 the term of supervised release, the Court may revoke the term of supervised release and require the
14 defendant to serve up to 5 additional years of imprisonment.

15 VI. SENTENCING DETERMINATION

16 A. Statutory Authority.

17 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
18 must take them into account when determining a final sentence. The defendant understands that the
19 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
20 Sentencing Guidelines and must take them into account when determining a final sentence. The
21 defendant further understands that the Court will consider whether there is a basis for departure from the
22 guideline sentencing range (either above or below the guideline sentencing range) because there exists
23 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
24 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
25 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
26 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

B. Stipulations Affecting Guideline Calculation:

The government and the defendant agree that there is no material dispute as to the following sentencing guidelines variables and therefore stipulate to the following:

1. Base Offense Level: 22 (U.S.S.G. § 2G2.2(a)(2))
2. Specific Offense Characteristics: -2 (receipt only, U.S.S.G. § 2G2.2(b)(1)); +2 (prepubescents in images, U.S.S.G. § 2G2.2(b)(2)); +4 (sadistic/masochistic conduct, U.S.S.G. § 2G2.2(b)(4)); +2 (use of computer, U.S.S.G. § 2G2.2(b)(6)); +3 (150-300 images, U.S.S.G. § 2G2.2(b)(7)(B))
3. Adjusted Offense Level: 31
4. Acceptance of Responsibility: See paragraph III.B.2 above
5. Criminal History: The parties estimate, but do not stipulate, that the defendant's criminal history category will be II.
6. Departures: None
7. Sentencing Range: 87-108 months; **60 months is the mandatory minimum** (The defendant understands that if the criminal history category differs from the parties' estimate, his Guidelines sentencing range may differ from that set forth here.)
8. Departures or Other Enhancements or Reductions:

The parties agree that they will not seek or argue in support of any other specific offense characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"), or cross-references.

The defendant is free to recommend to the Court whatever sentence he believes is appropriate under 18 U.S.C. § 3553(a) so long as he does not recommend a sentence below the mandatory minimum of 5 years of imprisonment. The government will recommend that the defendant be sentenced to a term of imprisonment within the applicable guideline range as determined by the Court.

VII. WAIVERS

A. Waiver of Constitutional Rights.

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, constitutional challenges to the statutes of

conviction, and other pretrial motions that have been filed or could be filed; (e) to subpoena witnesses to testify on his behalf; (f) to confront and cross-examine witnesses against him; and (g) not to be compelled to incriminate himself.

B. Waiver of Appeal and Collateral Attack.

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not exceed the statutory maximum for the offense to which he is pleading guilty. The defendant understands that this waiver includes, but is not limited to, any and all constitutional and/or legal challenges to the defendant's conviction and guilty plea, including arguments that the statutes to which defendant is pleading guilty are unconstitutional, and any and all claims that the statement of facts attached to this agreement is insufficient to support the defendant's plea of guilty. The defendant specifically gives up the right to appeal any order of restitution the Court may impose.

Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant understands that these circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete waiver of all appellate rights.

In addition, regardless of the sentence the defendant receives, the defendant also gives up any right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever attempts to vacate his plea, dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.F herein.

C. Waiver of Attorneys' Fees and Costs.

The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the

1 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
2 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
3 charges previously dismissed).

4 **D. Sex Offender Registration.**

5 Defendant understands that by pleading guilty, defendant will be required to register as a sex
6 offender upon his release from prison as a condition of supervised release pursuant to 18 U.S.C.
7 § 3583(d). Defendant also understands that independent of supervised release, he will be subject to
8 federal and state sex offender registration requirements, and that those requirements may apply
9 throughout his life. The defendant understands that he shall keep his registration current, shall notify the
10 state sex offender registration agency or agencies of any changes to defendant's name, place of
11 residence, employment, or student status, or other relevant information. Defendant shall comply with
12 requirements to periodically verify in person his sex offender registration information. Defendant
13 understands that he will be subject to possible federal and state penalties for failure to comply with any
14 such sex offender registration requirements. If he resides in California following release from prison, he
15 will be subject to the registration requirements of California Penal Code Section 290. Defendant further
16 understands that, under 18 U.S.C. § 4042(c), notice will be provided to certain law enforcement agencies
17 upon his release from confinement following conviction. As a condition of supervised release,
18 defendant shall initially register with the state sex offender registration in California, and shall also
19 register with the state sex offender registration agency in any state where defendant resides, is
20 employed, works, or is a student, as directed by the Probation Officer. The defendant shall comply with
21 all requirements of federal and state sex offender registration laws, including the requirement to update
22 his registration information. Defendant shall provide proof of registration to the Probation Officer
23 within 72 hours of release from imprisonment.

24 **VIII. ENTIRE PLEA AGREEMENT**

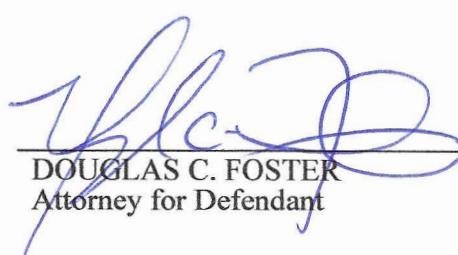
25 Other than this plea agreement, no agreement, understanding, promise, or condition between the
26 government and the defendant exists, nor will such agreement, understanding, promise, or condition
27 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
28 counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.


Dated: 11/3/2021


DOUGLAS C. FOSTER
Attorney for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated: 11/03/21


TANNER JOEL HERNANDEZ-FIELDS
Defendant

C. Attorney for United States:

I accept and agree to this plea agreement on behalf of the government.

Dated: 11/03/2021

PHILLIP A. TALBERT
Acting United States Attorney

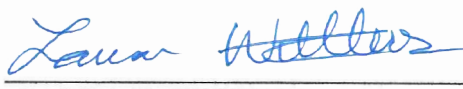

LAURA D. WITHERS
Assistant United States Attorney

EXHIBIT "A"

Factual Basis for Plea

If this case went to trial, the United States would establish the following facts beyond a reasonable doubt:

Defendant Tanner Joel Hernandez-Fields, from on or about March 19, 2019, and continuing through on or about April 12, 2019, in the County of Fresno, within the State and Eastern District of California, did knowingly receive or distribute one or more matters which contained any visual depiction of a minor engaged in sexually explicit conduct as defined in Title 18, United States Code, Section 2256, and was of such conduct, and had been produced using materials which had been mailed, shipped, or transported in interstate or foreign commerce. Specifically, the defendant received onto an Apple iPhone 6 Model A1549, which was manufactured in China and therefore traveled in foreign commerce, at least one image file which contained a visual depiction, the producing of which involved the use of a minor engaged in sexually explicit conduct and was of such conduct, and which had traveled in interstate commerce, all in violation of Title 18, United States Code, Section 2252(a)(2). Including video and image files, defendant received between 150 and 300 images; these images included depictions of pre-pubescent minors including vaginal penetration of a prepubescent minor female, which defendant admits meets the definition for sentencing purposes of sadistic or masochistic conduct.

Dated: 11/03/21



TANNER JOEL HERNANDEZ-FIELDS
Defendant